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FEDERAL COMMUNICATIONS COMMISSION
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August 8, 1995

BY HAND DELIVERY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

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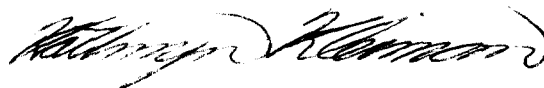
Re: Amendment of Section 73.606(b)
MM Docket No. 92-246, RM-8091
Ridgecrest, California

Dear Mr. Caton:

On behalf of Valley Public Television, Inc., there is submitted an original and 14 copies of its *Reply to Opposition to Application for Review* filed in response to the *Opposition to Application for Review* filed by Community Television of Southern California in the above-referenced matter.

Should any questions arise concerning this matter, please contact this office.

Very truly yours,



Richard Hildreth
Kathryn A. Kleiman
Counsel for
Valley Public Television, Inc.

KAK/bll
Enclosures

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BEFORE THE

Federal Communications Commission

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AUG 8 1995

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of

Amendment of Section 73.606(b)
Table of Allotments
TV Broadcast Stations
(Ridgecrest, California)

MM Docket No. 92-246
RM-8091

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To: The Commission

REPLY TO OPPOSITION TO APPLICATION FOR REVIEW

Valley Public Television, Inc. ("Valley"), by its attorneys, hereby replies to the *Opposition to Application for Review* ("*Opposition*") filed by Community Television of Southern California ("Community TV") in response to the *Application For Review* ("*Application*") filed by Valley in this proceeding on July 10, 1995. With respect thereto, the following is presented.

In an action, the Mass Media Bureau affirmed a decision which dismissed Valley's Petition for Rulemaking to substitute Channel *41 for Channel *25 at Ridgecrest, California or to establish a site restriction on Channel *25.¹ This was done not because the proposal was deficient, but because of a temporary truce reached by Valley and Community in a comparative hearing. This matter is important both to the Commission and to the public and, to this end, Valley urges the Commission to reject Community TV's inaccurate and unresponsive arguments.²

¹ *Memorandum Opinion and Order*, MM Docket 92-246, rel. June 9, 1995.

² It should be noted that Community TV's standing in this matter is in question. Community TV does not have any direct interest in the substitution of Channel *41 for Channel *25 or the site restriction on Channel *25 at Ridgecrest, California. It has never filed any applications for licenses in Ridgecrest and has not stated it would do so in the future.

Community TV Fails to Refute Valley's Arguments

As set out in its *Application*, Valley has three very clear reasons for asking the Commission to continue this proceeding: it intends to reapply for Channel *39 at Bakersfield; its application will be submitted within the next three years, at the latest; and termination and re-initiation of this proceeding will only waste Commission resources.³ None of these arguments were refuted by Community TV.

Community TV argues that Valley's statement that it will apply for Channel *39 at Bakersfield is "not supported" by affidavit or declaration. Such a declaration is not required by the Commission's rules, and Valley has already given notice that it intends to re-apply for Channel *39. The position taken by Valley is in furtherance of its ongoing efforts to apply for the established Breckenridge antenna farm, the site best situated and equipped to serve the largest number of Bakersfield area residents with the highest quality signal.

Next, Community TV states that Valley's expression of intent to apply for Channel *39 is "simply too speculative to justify any modification of the Table of Allotments." *Opposition*, p. 4. That is utter nonsense, and Community TV, the only other party to the settlement agreement,⁴ does not contradict Valley's description of the settlement terms.⁵ Clearly, the opportunity for

³ If Valley is forced to wait until the end of the temporary "hold" period, it will be faced with the burden of re-filing its rulemaking proposal which is not likely to be resolved until after cut-off of Valley's re-filed application or designation for hearing. This means that the transmitter site that Valley wishes to use will be unavailable at the time Valley files its application, which would place Valley in an untenable position *vis a vis*, Community which is also likely to file an application, albeit at an inferior site, as it did before.

⁴ Accepted by the Commission in the *Memorandum Opinion and Order*, MM Docket 93-93 (FCC 93M-489), released July 20, 1993.

⁵ The Settlement Agreement will terminate in three years, at the end of August, 1998. However, if an independent third-party applies for Channel *39 at Bakersfield, both Valley and Community Television are free to immediately file competing applications.

Valley to reapply for Channel *39 at Bakersfield definitely will reopen within three years or less.

Community TV declares that "virtually any change in a television allotment affects other parties since a change in the Table has a rippling effect and could preclude other changes by applicants interested in facilities in other locales" *Opposition*, p. 4. This is more nonsense. Community TV knows (or should know) full well the history of this proceeding and the misleading nature of its statements. The Ridgecrest Channel *25 allocation has never been applied for in the 30 years following its allocation and cannot now be applied for due to the ATV freeze. Further, the Commission in 1985 determined that allocation of Channel *41 to Ridgecrest poses no technical problems.⁶

Community TV argues that this proceeding should not continue because Valley should be saving its resources for ATV facilities. If the ATV argument were valid, then the Commission would be dismissing all applications for new construction permits and major modifications to force stations to "marshal" their resources. Such action is not taking place and such a narrow view should not be imposed on Valley.

If any argument in this proceeding is "speculative," it is Community TV's allegation that Valley will be financially unable to support the construction and operation of a full-power station on Channel *39 at Bakersfield. Community TV offers no support for its position nor could it. The *Opposition* asks the Commission to follow a tortured path of reasoning to arrive at an invalid conclusion: namely, because certain members of Congress question the value of noncommercial educational broadcasting; the Federal government will be drastically cutting all contributions to

⁶ *Notice of Proposed Rulemaking*, MM Docket No. 85-390, rel. Dec. 18, 1985 (to substitute Channel *25 for Channel *41 at Ridgecrest; an allocation not made for reasons unknown).

noncommercial educational television; all national, regional, and local contributors will shrivel; Valley will lose significant funds; Valley will be unable through acts of economy and ingenuity to continue its commitment to quality programming and full operations for the San Joaquin Valley; and therefore, Valley (and Community) will be unable to construct and operate the new Bakersfield station. What Community is really saying is that, if it is wrong (and it most assuredly is), then this proposed rulemaking should be acted upon favorably.

Community TV's Silence on Two Key Matters Is Revealing

Community TV has failed to address two issues. The first is whether it will go forward with an application for Channel *39 at Bakersfield. In light of its financial concerns regarding ATV facilities and Federal support, it is not clear that Community TV believes it will have the resources to reapply for this station.

In addition, Community TV has failed to recognize the central issue of this matter -- that the Commission will waste valuable time and resources if this fully mature proceeding is terminated, only to be re-initiated within three years.⁷ The Commission has recently committed itself to more efficient practices and faster processing of applications.⁸ To terminate and then restart this proceeding runs counter to that commitment and would be a tax on the resources of Valley, a delay of service to the community of Bakersfield, and a burden to a busy and hard-working Commission staff. The Commission, therefore, should use the current window created by the temporary settlement agreement between Valley and Community TV to settle this

⁷ Community's objection is, of course, strategic, since it does not want to have the superior antenna farm site available to Valley when the "hold" period expires. Should Community file a competing application for the inferior site it originally proposed, Valley would be faced with complex and possibly fatal issues in a comparative proceeding with Community.

⁸ See, eg., *FCC to Implement New Guidelines to Improve Decision-Making Process*, Public Notice, rel. June 19, 1995.

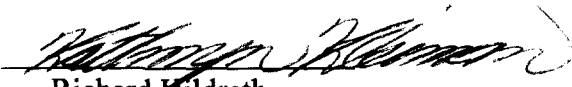
allocation matter and complete this proceeding. It makes no sense whatsoever to do otherwise.

WHEREFORE, THE PREMISES CONSIDERED, it is respectfully requested that the Commission reverse the *Memorandum Opinion and Order* in MM Docket 92-246 (RM-8091) decided pursuant to delegated authority, and that it continue its consideration of Valley Public Television's proposal to substitute Channel *41 for Channel *25 at Ridgecrest, California, or to establish a site restriction on Channel *25 at Ridgecrest. If the Commission does not wish to proceed with the allocation question now, then it is requested that it hold this matter in abeyance until Valley re-submits its application for Channel *39 at Bakersfield specifying the Breckenridge transmitter site, a filing which will take place no later than September 1, 1998, and that it order that the record of this proceeding, as presently established, be the record for the evaluation of the instant proposal, and further, that a final order on the proposed allocation be issued no later than ninety (90) days after Valley files its application.

Respectfully requested,

VALLEY PUBLIC TELEVISION, INC.

By:


Richard Hildreth
Kathryn A. Kleiman

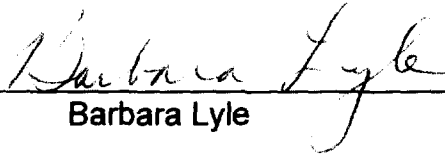
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CERTIFICATE OF SERVICE

I, Barbara Lyle, a secretary in the law firm of Fletcher, Heald & Hildreth, P.L.C. do hereby certify that a true copy of the foregoing *Reply to Opposition to Application for Review* was sent this 8th day of August, 1995, by first class United States mail, postage prepaid, to the following:

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